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HOUSE BILL 242

49TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2009

INTRODUCED BY

Nathan P. Cote

AN ACT

RELATING TO HUMAN RIGHTS; PROHIBITING DISCRIMINATION AGAINST
PERSONS SPOUSALLY AFFILIATED WITH MEMBERS OF THE UNIFORMED
SERVICES OF THE UNITED STATES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. Section 28-1-2 NMSA 1978 (being Laws 1969,
Chapter 196, Section 2, as amended) is amended to read:

"28-1-2. DEFINITIONS.--As used in the Human Rights Act:

A. "person" means one or more individuals, a
partnership, association, organization, corporation, joint
venture, legal representative, trustees, receivers or the state
and all of its political subdivisions;

B. "employer" means any person employing four or
more persons and any person acting for an employer;

C. "commission" means the human rights commission;

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1 D. "director" or "bureau" means the human rights
2 bureau of the labor relations division of the workforce
3 solutions department;

4 E. "employee" means any person in the employ of an
5 employer or an applicant for employment;

6 F. "labor organization" means any organization that
7 exists for the purpose in whole or in part of collective
8 bargaining or of dealing with employers concerning grievances,
9 terms or conditions of employment or of other mutual aid or
10 protection in connection with employment;

11 G. "employment agency" means any person regularly
12 undertaking with or without compensation to procure
13 opportunities to work or to procure, recruit or refer
14 employees;

15 H. "public accommodation" means any establishment
16 that provides or offers its services, facilities,
17 accommodations or goods to the public, but does not include a
18 bona fide private club or other place or establishment that is
19 by its nature and use distinctly private;

20 I. "housing accommodation" means any building or
21 portion of a building that is constructed or to be constructed,
22 which is used or intended for use as the residence or sleeping
23 place of any individual;

24 J. "real property" means lands, leaseholds or
25 commercial or industrial buildings, whether constructed or to

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1 be constructed, offered for sale or rent, and any land rented
2 or leased for the use, parking or storage of house trailers;

3 K. "secretary" means the secretary of workforce
4 solutions;

5 L. "unlawful discriminatory practices" means those
6 unlawful practices and acts specified in Section 28-1-7 NMSA
7 1978;

8 M. "physical or mental handicap" means a physical
9 or mental impairment that substantially limits one or more of a
10 person's major life activities. A person is also considered to
11 be physically or mentally handicapped if the person has a
12 record of a physical or mental handicap or is regarded as
13 having a physical or mental handicap;

14 N. "major life activities" means functions such as
15 caring for one's self, performing manual tasks, walking,
16 seeing, hearing, speaking, breathing, learning and working;

17 O. "applicant for employment" means a person
18 applying for a position as an employee;

19 P. "sexual orientation" means heterosexuality,
20 homosexuality or bisexuality, whether actual or perceived;
21 [and]

22 Q. "gender identity" means a person's
23 self-perception, or perception of that person by another, of
24 the person's identity as a male or female based upon the
25 person's appearance, behavior or physical characteristics that

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1 are in accord with or opposed to the person's physical anatomy,
2 chromosomal sex or sex at birth; and

3 R. "uniformed service of the United States" means
4 the army, navy, air force, marine corps or coast guard or the
5 commissioned corps of the public health service or the national
6 oceanic and atmospheric administration."

7 Section 2. Section 28-1-7 NMSA 1978 (being Laws 1969,
8 Chapter 196, Section 7, as amended) is amended to read:

9 "28-1-7. UNLAWFUL DISCRIMINATORY PRACTICE.--It is an
10 unlawful discriminatory practice for:

11 A. an employer, unless based on a bona fide
12 occupational qualification or other statutory prohibition, to
13 refuse to hire, to discharge, to promote or demote or to
14 discriminate in matters of compensation, terms, conditions or
15 privileges of employment against any person otherwise qualified
16 because of race, age, religion, color, national origin,
17 ancestry, sex, physical or mental handicap, [øæ] serious
18 medical condition or spousal affiliation with a member of a
19 uniformed service of the United States, or, if the employer has
20 fifty or more employees, spousal affiliation; provided,
21 however, that 29 U.S.C. Section 631(c)(1) and (2) shall apply
22 to discrimination based on age; or, if the employer has fifteen
23 or more employees, to discriminate against an employee based
24 upon the employee's sexual orientation or gender identity;

25 B. a labor organization to exclude a person or to

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1 expel or otherwise discriminate against any of its members or
2 against any employer or employee because of race, religion,
3 color, national origin, ancestry, sex, sexual orientation,
4 gender identity, spousal affiliation, physical or mental
5 handicap, [Ø] serious medical condition or spousal affiliation
6 with a member of a uniformed service of the United States;

7 C. any employer, labor organization or joint
8 apprenticeship committee to refuse to admit or employ any
9 person in any program established to provide an apprenticeship
10 or other training or retraining because of race, religion,
11 color, national origin, ancestry, sex, sexual orientation,
12 gender identity, physical or mental handicap, [Ø] serious
13 medical condition or spousal affiliation with a member of a
14 uniformed service of the United States, or, if the employer has
15 fifty or more employees, spousal affiliation;

16 D. any person, employer, employment agency or labor
17 organization to print or circulate or cause to be printed or
18 circulated any statement, advertisement or publication, to use
19 any form of application for employment or membership or to make
20 any inquiry regarding prospective membership or employment that
21 expresses, directly or indirectly, any limitation,
22 specification or discrimination as to race, color, religion,
23 national origin, ancestry, sex, sexual orientation, gender
24 identity, physical or mental handicap, [Ø] serious medical
25 condition or spousal affiliation with a member of a uniformed

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1 service of the United States, or, if the employer has fifty or
2 more employees, spousal affiliation, unless based on a bona
3 fide occupational qualification;

4 E. an employment agency to refuse to list and
5 properly classify for employment or refer a person for
6 employment in a known available job, for which the person is
7 otherwise qualified, because of race, religion, color, national
8 origin, ancestry, sex, sexual orientation, gender identity,
9 spousal affiliation, physical or mental handicap, ~~[or]~~ serious
10 medical condition or spousal affiliation with a member of a
11 uniformed service of the United States, unless based on a bona
12 fide occupational qualification, or to comply with a request
13 from an employer for referral of applicants for employment if
14 the request indicates either directly or indirectly that the
15 employer discriminates in employment on the basis of race,
16 religion, color, national origin, ancestry, sex, sexual
17 orientation, gender identity, spousal affiliation, physical or
18 mental handicap, ~~[or]~~ serious medical condition or spousal
19 affiliation with a member of a uniformed service of the United
20 States, unless based on a bona fide occupational qualification;

21 F. any person in any public accommodation to make a
22 distinction, directly or indirectly, in offering or refusing to
23 offer its services, facilities, accommodations or goods to any
24 person because of race, religion, color, national origin,
25 ancestry, sex, sexual orientation, gender identity, spousal

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1 affiliation or physical or mental handicap, provided that the
2 physical or mental handicap is unrelated to a person's ability
3 to acquire or rent and maintain particular real property or
4 housing accommodation;

5 G. any person to:

6 (1) refuse to sell, rent, assign, lease or
7 sublease or offer for sale, rental, lease, assignment or
8 sublease any housing accommodation or real property to any
9 person or to refuse to negotiate for the sale, rental, lease,
10 assignment or sublease of any housing accommodation or real
11 property to any person because of race, religion, color,
12 national origin, ancestry, sex, sexual orientation, gender
13 identity, spousal affiliation or physical or mental handicap,
14 provided that the physical or mental handicap is unrelated to a
15 person's ability to acquire or rent and maintain particular
16 real property or housing accommodation;

17 (2) discriminate against any person in the
18 terms, conditions or privileges of the sale, rental,
19 assignment, lease or sublease of any housing accommodation or
20 real property or in the provision of facilities or services in
21 connection therewith because of race, religion, color, national
22 origin, ancestry, sex, sexual orientation, gender identity,
23 spousal affiliation or physical or mental handicap, provided
24 that the physical or mental handicap is unrelated to a person's
25 ability to acquire or rent and maintain particular real

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1 property or housing accommodation; or

2 (3) print, circulate, display or mail or cause
3 to be printed, circulated, displayed or mailed any statement,
4 advertisement, publication or sign or use any form of
5 application for the purchase, rental, lease, assignment or
6 sublease of any housing accommodation or real property or to
7 make any record or inquiry regarding the prospective purchase,
8 rental, lease, assignment or sublease of any housing
9 accommodation or real property that expresses any preference,
10 limitation or discrimination as to race, religion, color,
11 national origin, ancestry, sex, sexual orientation, gender
12 identity, spousal affiliation or physical or mental handicap,
13 provided that the physical or mental handicap is unrelated to a
14 person's ability to acquire or rent and maintain particular
15 real property or housing accommodation;

16 H. any person to whom application is made either
17 for financial assistance for the acquisition, construction,
18 rehabilitation, repair or maintenance of any housing
19 accommodation or real property or for any type of consumer
20 credit, including financial assistance for the acquisition of
21 any consumer good as defined by Section 55-9-102 NMSA 1978, to:

22 (1) consider the race, religion, color,
23 national origin, ancestry, sex, sexual orientation, gender
24 identity, spousal affiliation or physical or mental handicap of
25 any individual in the granting, withholding, extending,

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1 modifying or renewing or in the fixing of the rates, terms,
2 conditions or provisions of any financial assistance or in the
3 extension of services in connection with the request for
4 financial assistance; or

5 (2) use any form of application for financial
6 assistance or to make any record or inquiry in connection with
7 applications for financial assistance that expresses, directly
8 or indirectly, any limitation, specification or discrimination
9 as to race, religion, color, national origin, ancestry, sex,
10 sexual orientation, gender identity, spousal affiliation or
11 physical or mental handicap;

12 I. any person or employer to:

13 (1) aid, abet, incite, compel or coerce the
14 doing of any unlawful discriminatory practice or to attempt to
15 do so;

16 (2) engage in any form of threats, reprisal or
17 discrimination against any person who has opposed any unlawful
18 discriminatory practice or has filed a complaint, testified or
19 participated in any proceeding under the Human Rights Act; or

20 (3) willfully obstruct or prevent any person
21 from complying with the provisions of the Human Rights Act or
22 to resist, prevent, impede or interfere with the commission or
23 any of its members, staff or representatives in the performance
24 of their duties under the Human Rights Act; or

25 J. any employer to refuse or fail to accommodate a

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1 person's physical or mental handicap or serious medical
2 condition, unless such accommodation is unreasonable or an
3 undue hardship."

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